IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20964 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MIRZA HAZI ASRARBAG A. & 13 - Petitioner(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

MR NEHAL R JOSHI for Petitioner(s) : 1 - 14.
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/10/2005

ORAL JUDGMENT

1. Rule. Service of rule is waived by Shri M.R.Mengade, learned AGP for respondent. With the consent of the learned advocates for the parties, the matter is heard finally today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Development Commissioner, State of Gujarat dated 30.7.2005 in superseding Makampura Gram Panchayat under Section 253 of the Gujarat Panchayats Act by forming an opinion that as the budget estimate of Makampura Gram Panchayat is not sanctioned and / or approved before 31.3.2005 as required under Section 116 of the Gujarat Panchayats Act, the said Panchayat has failed to perform its statutory duties.

3. The Makampura Gram Panchayat is constituted under the provisions of Gujarat Panchayats Act, 1993 and as per Section 116 of the Gujarat Panchayats Act, the said Panchayat is required to approve the budget estimate for he financial year 2005-06 on or before 31.3.2005 and as the budget estimate ws not approved on or before 31.3.2005 and on the contrary the same was disapproved by majority, the Development Commissioner, State of Gujarat was of the opinion

that twice the efforts were made to approve the budget estimate and the Panchayat has failed to approve the budget estimate and thereby the Panchayat has failed to perform its statutory duties and accordingly, the Panchayat was to be dissolved under Section 253 of the Gujarat Panchayats Act, a show cause notice was issued and after giving an opportunity to the petitioner Panchayat, impugned order came to be passed dissolving Maktampura Gram Panchayat. Being aggrieved and dissatisfied with the order passed by the Development Commissioner, State of Gujarat dated 30.7.2005 superseding the Maktampura Gram Panchayat exercising the powers under Section-253 of the Gujarat Panchayat Act, the petitioners have preferred the present special civil application under Article 226 of the Constitution of India.

4. Shri N.R.Joshi, learned advocate appearing on behalf of the petitioners has submitted that the meeting was called for to approve the budge estimate on 31.3.2005, however, in view of the fact that due to sad demise of one social worker, the majority of

the members could not remain present in the meeting and out of 23 members only 13 members were present and 7 members cast their vote against approval of the budget estimate and remaining 6 members cast their vote in favour of sanction of the budget and therefore, the budget estimate could not be approved by majority. It is also further submitted by Shri Joshi that again efforts were made to approve the budget estimate by calling the meeting on 11.7.2005, however, the some head strong persons had come from outside in the meeting and under the duress and feeling of fear the budget was not approved. It is submitted that the aforesaid facts were submitted before the Development Commissioner but he has not considered the same. He has further submitted that if one additional chance is given to the petitioners, the budget estimate will be approved and therefore, it is requested to allow the present special civil application by giving them one additional chance. Relying upon the judgment of the learned Single Judge of this Court in case of Thasra Village Panchayat Vs. P.D. Vaghela, 2003 (1) GLR Page 676, it is submitted by Shri Joshi that as held by this Court even the budget

estimate can be approved after 31st March of the current year and it is not mandatory to pass the budget estimate on or before 31st March of the current year.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is required to be noted that the Maktampura Gram Panchayat is constituted under the provisions of the Gujarat Panchayats Act and they are supposed to comply with the provisions of the Gujarat Panchayats Act. As per Section-116 of the Gujarat Panchayats Act, every village panchayat is required to approve the budget estimate on or before 31st March of the current year. As per Section-253 of the Act, if the State Government is of the opinion that a panchayat is incompetent to perform the duties imposed on it or the functions entrusted to it under any provisions of the Gujarat Panchayat Act, the State Government may after consultation with the District Panchayat dissolve such Panchayat or supersede such Panchayat. Therefore, for non passing of the budget as

contemplated under Section-116 of the Act, it can be said that the Panchayat is incompetent to perform its statutory duties imposed on it and therefore, the Panchayat can be dissolved or superseded. In the present case, twice the efforts were made to pass and approve the budget estimate. First such an attempt came to be made on 31.3.2005 and the said resolution was failed and the budget estimate could not be approved by 7 votes : 6 votes and thereafter, on next occasion on 21.7.2005 the budget estimate could not be passed. So far as the contention on behalf of the petitioner that on 21.7.2005 some head strong persons came in the meeting and out of duress and feeling of fear the members did not pass the budget estimate is concerned, it requires to be noted that there is no such complaint by the members who were present in the meeting before any higher authority or even before the police authority and therefore, under the circumstances, the same cannot be accepted. Even in the meeting which was convened on 21.7.2005, the budget estimate was not approved by 9 : 3 members. Under the circumstances, when the panchayat failed to approve the budget estimate before 31.3.2005 and even

subsequently and the State Government formed an opinion considering the provisions of Section-116 read with Section-253 of the Act, that the Panchayat is incompetent to perform its statutory duties and therefore, the same is required to be dissolved and is accordingly dissolved, it cannot be said that there is any illegality committed by the Development Commissioner.

7. So far as reliance placed upon the judgment of the learned Single Judge of this Court in case of Thasra Village Panchayat Vs. P.D. Vaghela, (Supra) is concerned, the submission on behalf of the petitioners is based on misinterpretation of the said judgment. This Court in the aforesaid judgment has not held that the budget estimate can be approved subsequently and that passing of the budget on or before 31st March of the current year is not mandatory. What is held by the learned Single Judge of this Court is that if the Panchayat is able to satisfy the Development Commissioner and / or State Government that the budget estimate could not be passed for valid reason/s, then the same is required

to be considered by the State Government while forming the opinion and to that extent, it is held by the learned Single Judge of this Court that the said provision is not mandatory to that extent only and non passing of the budget estimate on or before the 31st March of current year will not ipso facto automatically lead to dissolution of the Panchayat. Under the circumstances, the contention on behalf of the petitioners on the basis of the aforesaid judgment, cannot be accepted and is not well founded.

8. For the reasons stated above, there is no substance in the present special civil application and the same is required to be dismissed and is accordingly dismissed.

Rule is discharged, however, there will be no order as to costs.

[M.R.Shah, J.]

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